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REMARKS – General

New Rejections under 35 USC §112

In the most recent OA, claims 21 and 22 have been rejected under §112 as being confusing. Specifically, the OA submits that original claim 2 includes a method step in an apparatus claims.

Applicants have amended these claims to recite a distributor with capabilities of leasing and monitoring the power machines. Support for the amendment is found in FIG. 1. The amendment is for syntactical purposes only, so as to recite the original claim in a more clear apparatus context. Applicants respectfully submit that the rejection is overcome by way of the amendment. Applicants respectfully request reconsideration of the rejection in light of the amendment.

Rejections under 35 USC§103

The OA rejects claims 1, 2, 4-8, 10-19 and 22 under §103(a) as being unpatentable over Chasek (US Pat. No. 5, 237,507) in view of Edelman et al. (US Pat. No. 6,281,601), herein after "Edelman". Specifically, with respect to claim 1, the OA submits that Chasek teaches the limitations of claim 1 except for a means for actuating a power machine. The OA submits that Edelman teaches a system for actuating a networked power generation system and that it would be obvious to one of ordinary skill in the art at the time the invention was made to combine Chasek and Edelman to achieve Applicants' invention.

In prior responses, Applicants respectfully submitted that the combination of Chasek and Edelman fails to teach all of Applicants' claimed limitations. Applicants again respectfully submit that neither the references, the OA, nor the most recent "Response to Arguments" section indicates the where in the references the following limitations are taught:

CLAIM 1: The combination fails to teach control circuitry that evaluates local data *after the receipt of a control signal and before actuation of the power machines*. By contrast, as noted in the previous correspondence, Edelman teaches a remote power meter as

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providing a control signal to the power machine. See e.g. col. 5, lines 18-28 and FIG. 5. Power meters measure power and may be used as sources of data, but do not include means for evaluating data like the price of electricity and hydrocarbons upon the receipt of a command signal. Chasek teaches a central utility computer that monitors information like temperature and demand. See e.g. FIG. 1. This is not control circuitry coupled to the power machine for evaluating local data after receiving a control signal from a central computer.

Applicants are unable to find any indication of these elements in either the OA or the references themselves. The most recent OA does not indicate where these limitations are found in the references. Applicants note that according to MPEP §2143, for a prima facie case of obviousness to be made, the references must teach _all_ of the Applicant's claimed limitations. Applicants respectfully submit that the OA still does not indicate where, in either reference, these limitations can be found. As such, Applicants very respectfully submit that no prima facie case of obviousness has been made. Applicants respectfully request reconsideration of the rejection in light of these remarks.

CLAIM 10: In addition to the limitations noted with respect to claim 1, Applicants respectfully submit that neither of the references teaches the control circuitry _omitting_ evaluation of the local data upon receipt of the override signal. There is no indication in Edelman that the power meter stops metering power upon the receipt of an override signal. Similarly, there is no indication in Chasek that the central utility computer omits evaluation of local data like temperature and demand upon the receipt of an override signal.

The OA does not indicate where, in either reference, the limitation can be found. As such, Applicants very respectfully submit that no prima facie case of obviousness has been made. Applicants respectfully request reconsideration of the rejection in light of these remarks.

The most recent OA submits that the clause "...omits evaluation of the local data upon receipt of the override signal..." is non-functional language. Applicants respectfully traverse this assertion.

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According to MPEP §2173.05(g), functional language is defined as "...an attempt to define something by what it does, rather than by what it is..." MPEP §2173.05(g) goes on to state that functional language is used in "...association with an element, ingredient, or step of a process *to define a particular capability* or purpose that is served by the recited element, ingredient or step." Emphasis added.

Applicants respectfully submit that the omission of the evaluation of local data is in fact functional language, in that it defines a particular capability of the control circuitry. Applicants respectfully submit that the omission of evaluation of local data by the control circuitry defines the control circuitry by *what it does*, and is thus, by definition, functional language because the act of omitting is an act that the control circuitry "does." In other words, omission of evaluation is something done by the control circuitry, and is thus functional.

The OA does not give a reason why the clause is considered non-functional. The OA cites two cases, *In re Gulack* and *In re Dembiczak*. In the former, the non-functional language at issue is printing on a band. The court states that the language printed has no relationship to the digits printed on the band and the band itself. In the latter, discusses a holiday trash bag with a pumpkin face being non-obvious over conventional trash bags, and fails to mention functional language on the page (1000) indicated by the OA. Applicants respectfully request clarification as to how either of these cases stands for the proposition that the act of omitting an evaluation when a signal is received is not an action, i.e. something the control circuitry *does*. Quite to the contrary, an affirmative step of not evaluating data is an action, and is thus functional.

Applicants respectfully submit that this is a functional clause, and not merely descriptive, and should be read into the claim. Applicants respectfully request reconsideration of the rejection in light of these comments.

Claim 20 is rejected under §103 as being unpatentable over Chasek and Edelman in view of Stich et al. Applicants have canceled claim 20 by amendment.

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Claim 21 is rejected under §103 as being unpatentable over Chasek in view of Edelman, further in view of Norris et al. (US Pat. No. 5,510,780), herein after "Norris". Specifically, the OA states that Chasek and Edelman teach the limitations of claim 21 except for licensing of power machines. The OA submits that Norris teaches controlling power generation equipment wherein the power machines are leased.
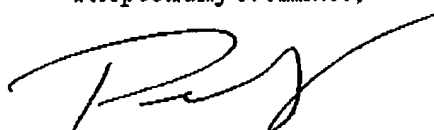
Applicants rely on the comments above regarding claim 10, as Applicants respectfully submit that no prima facie case of obviousness has been made with respect to independent claim 10 (from which claim 21 depends). Applicants respectfully request reconsideration of the rejection in light of the amendments.

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CONCLUSION

For the above reasons, Applicants believe the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Applicants believe this application is now in condition for allowance, for which they respectfully submit.

Respectfully submitted,

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